

United States District Court
District of Massachusetts

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| v. |) | |
| |) | |
| ALBANIA DELEON, |) | Criminal Action No. |
| |) | 07-10277-NMG |
| Defendant. |) | |
| |) | |
| |) | |
| _____ |) | |

MEMORANDUM & ORDER

GORTON, J.

In June, 2016, this Court dismissed the habeas petition of Albania Deleon ("Deleon"). Deleon now requests a Certificate of Appealability.

I. Background

In her habeas petition, Deleon challenged her conviction and sentence on ineffective assistance of counsel grounds. Specifically, Deleon alleged that her counsel, Carl N. Donaldson ("Donaldson"), was ineffective because he 1) consented to submitting three summary chalks to the jury while deliberations were ongoing, 2) failed to hire an expert to oppose the government's loss estimations, 3) failed to retain an expert to rebut the testimony of a witness, 4) advised Deleon to go to trial and testify, 5) failed to discuss the pre-sentencing report ("PSR") with Deleon and 6) did not open mail from the

Court and the government and delayed forwarding materials to her new counsel during sentencing. Deleon also contended that she was entitled to re-sentencing pursuant to Alleyne v. United States, 133 S.Ct. 2151 (2013).

In June, 2016, after considering Deleon's objections, this Court adopted the report and recommendation ("R&R") of the Magistrate Judge and dismissed the petition. Deleon now seeks a Certificate of Appealability for her ineffective assistance of counsel claim.

II. Legal Analysis

A. Standard

Section 2253(c) of Title 28 of the United States Code provides that a Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a "substantial showing," a petitioner seeking a Certificate of Appealability must demonstrate that

reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

Slack v. McDaniel, 529 U.S. 473, 484 (2000). To meet the debatable-among-jurists-of-reason standard the petitioner must prove "something more than the absence of frivolity or the

existence of mere good faith." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

B. Application

Deleon fails to demonstrate that "reasonable jurists could debate" whether her petition for writ of habeas corpus should have been decided differently on the ineffective assistance of counsel ground. Slack, 529 U.S. at 484. As discussed in the R&R, the evidence in the summary chawks submitted to the jury was cumulative and therefore harmless. Donaldson's decision to mount defenses that did not include hiring experts was strategic, within the range of objective reasonableness and there is no evidence that it prejudiced the outcome of the trial. Furthermore, Donaldson's advice to Deleon to testify was not coercive and, again, there is no evidence that it prejudiced the outcome of the case. Donaldson's failure to discuss the PSR with Deleon and failure to timely forward mail to her new attorney are non-prejudicial because Donaldson was no longer representing her during the sentencing and her new counsel requested and received several extensions to ensure that she had adequate time to prepare for the sentencing hearing.

This Court thoroughly and reasonably addressed Deleon's arguments as to the ineffective assistance of counsel claim, and reasonable jurists could not disagree with its reasoning. Accordingly, the motion for a Certificate of Appealability with

respect to the ineffective assistance of counsel claim in Deleon's habeas petition will be denied.

ORDER

In accordance with the foregoing, petitioner's motion for a Certificate of Appealability is **DENIED**.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated October 4, 2016